

**4 : Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity** (Revised 10/2007)

**MEMORANDUM OF AGREEMENT BETWEEN**  
**FEDERAL AVIATION ADMINISTRATION (FAA)**  
**AND**

**[CO insert Name of non-Federal Party (Parties)]**

**ARTICLE I. PARTIES**

The parties to this Agreement are the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party]

**ARTICLE 2. SCOPE**

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party] is to [CO insert description of purpose of the agreement].

b. Specific goals and objectives to be accomplished:

c. Management of the project:

d. Roles and responsibilities:

Parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement

e. Contributions of the Parties:

[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in-kind contributions, responsibility for repairs, refurbishment, and disposition.]

f. Type of Agreement:

This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

**ARTICLE 3. EFFECTIVE DATE and TERM**

The effective date of this Agreement is the date on which it is signed by the FAA or [CO insert name of non-Federal party], whichever is later. This Agreement shall continue in effect until [CO insert completion date] or until earlier terminated by the parties as provided herein.

**ARTICLE 4. MILESTONES**

Work shall be accomplished according to the following milestones. [CO insert information in the following spaces.]

*Note. This schedule should be tailored as appropriate.*

<b><u>Milestone</u></b>	<b><u>Completion Date</u></b>	<b><u>Responsible Party</u></b>
Sign Agreement	_____	_____
Detailed SOW	_____	_____
Subcontract Selection(s)	_____	_____
Subcontract Approval(s)	_____	_____
Subcontract Award(s)	_____	_____
Project Completion	_____	_____

## **ARTICLE 5. REPORTING REQUIREMENTS**

[CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.]

## **ARTICLE 6. INTELLECTUAL PROPERTY**

### **a. Rights in Data**

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

- (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,
- (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

### **b. Rights in Inventions**

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form).

*Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)*

#### **ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

#### **ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

\_\_\_\_\_  
\_\_\_\_\_

Non-FAA Party

\_\_\_\_\_  
\_\_\_\_\_

FAA Contracting Officer

\_\_\_\_\_  
\_\_\_\_\_

#### **ARTICLE 9. FUNDING AND PAYMENT**

a. The FAA will contribute \$ [CO insert amount] as its share of the cost to perform this Agreement. The [Co insert name of non-Federal party] will contribute [CO describe schedule of in-kind contributions, if any]. Funds in the amount of \$[CO insert amount] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [CO insert appropriation code] in procurement request number[CO insert number].

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

\_\_\_\_\_

c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

#### **ARTICLE 10. LIMITATION OF FUNDS**

The Government's liability to make payments to *[CO insert name of non-Federal party]* is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

#### **ARTICLE 11. APPROVAL OF SUBCONTRACTORS**

The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer's written consent before placing any subcontract.

#### **ARTICLE 12. AUDITS**

The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.

#### **ARTICLE 13. CHANGES, MODIFICATIONS**

Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the *[CO identify representative or designee]* of *[CO insert name of non-Federal party]*. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

#### **ARTICLE 14. TERMINATION**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

*[CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition].*

#### **ARTICLE 15. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

#### **ARTICLE 16. CONSTRUCTION OF THE AGREEMENT**

This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

#### **ARTICLE 17. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

#### **ARTICLE 18. WARRANTIES**

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

#### **ARTICLE 19. INSURANCE**

[CO insert name of non-Federal party] shall arrange by insurance or otherwise for the full protection of [CO insert name of non-Federal party] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [CO insert name of non-Federal party], its employees, or contractors, or any third party acting on its behalf. [CO insert name of non-Federal party] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.

#### **ARTICLE 20. LIMITATION OF LIABILITY**

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [CO insert amount] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

#### **ARTICLE 21. LOWER TIER AGREEMENTS**

[CO insert name of non-Federal party] shall include Articles [CO insert article numbers] suitably modified in all lower tier Agreements, regardless of tier).



**ARTICLE 22. CIVIL RIGHTS ACT**

[CO insert name of non-Federal party] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

**ARTICLE 23. OFFICIALS NOT TO BENEFIT**

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.

**ARTICLE 24. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

**AGREED:**TBDFederal Aviation Administration

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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